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DEPARTMENT OF TRANSPORTATION

Maritime Administration

Docket Number MARAD-2014-0132

Deepwater Port License Application Process for Offshore Export Facilities

AGENCY: Maritime Administration, Department of Transportation

ACTION: Final policy.

SUMMARY: This notice serves to inform interested parties and the public of the Maritime Administration's (MARAD) final policy to accept, evaluate and process license applications for the construction and operation of offshore deepwater port facilities for the export of oil and natural gas from the United States to foreign markets abroad and to use the existing Deepwater Port regulations for such purposes. On October 16, 2014, MARAD published a notice in the Federal Register seeking public comment on a draft policy under which such export applications would be accepted and processed. In response, the agency received 337 comments to which it provides its responses below.

DATES: This policy is effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: The complete file for this policy is available for inspection with the Docket Clerk, Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays. You may also view the comments submitted to the docket via the Federal eRulemaking Portal at <http://www.regulations.gov> by following search instructions using DOT Docket Number MARAD–2014–0132.

FOR FURTHER INFORMATION CONTACT: You may contact Yvette M. Fields, Director, Office of Deepwater Ports and Offshore Activities, Maritime Administration, at (202) 366-0926. You may send mail to Ms. Fields at Maritime Administration, 1200 New Jersey Avenue, SE, MAR 530, W21-309, Washington, DC 20590–0001. You may send electronic mail to Yvette.Fields@dot.gov. If you have questions on viewing the Docket, call Docket Operations, telephone: (202) 366-9826.

SUPPLEMENTARY INFORMATION: Pursuant to this notice, MARAD announces its final policy to accept and process applications for licenses for the ownership, construction and operation of deepwater port oil and natural gas export facilities. MARAD previously published a Notice of Proposed Policy (79 FR 62242, Oct. 16, 2014).

Comments on the Proposed Policy

In response to the Federal Register notice seeking public comment on its proposed policy for deepwater ports license application process for offshore export facilities, MARAD received a total of 337 comment submissions from the following entities: 328 individual comments from private citizens expressing support for the proposed application process; a letter of support from Senator Lisa Murkowski of Alaska; a letter of support from Delfin LNG, LLC, a private energy company; a letter from the New York Department of State (NYDOS) Office of Planning and

Development, Deputy Secretary of State generally supportive of the proposed policy, but requesting additional considerations; a letter containing five comments from Clean Ocean Action (COA), an environmental interest group; one comment from a private citizen, who stated that MARAD should link the approval of deepwater port export projects to the use of U.S. flag vessels and U.S. crews; and four comments erroneously submitted to the docket by private individuals expressing opposition to a specific deepwater port application, which is not the subject of this notice or the proposed application process. As the bulk of the comments were in favor of the proposed policy without qualification, the agency has elected to respond below to specific comments provided by NYDOS, COA and the private citizen that expressed support of the use of U.S. flag vessels and U.S. crews in conjunction with deepwater port exports.

In its letter, NYDOS provided four substantive comments on the proposed policy. NYDOS' first comment requested that MARAD include the approval from the Governor(s) of adjacent coastal State(s) as a fourth licensing requirement for the conversion of licensed import facilities to export facilities. Receiving approval or presumptive approval of the Governor of the adjacent coastal State(s) is a mandatory requirement of the Deepwater Port Act, as amended, (DWPA) (33 U.S.C. 1503(c)(8)), and as such will continue to be a condition for issuance of a deepwater port export facility license.

NYDOS' second comment requested that MARAD's proposed policy language require compliance with the nine factors specified in 33 U.S.C. 1503(c), not simply "consideration" of those factors as currently stated in the policy. MARAD has clarified the final policy to make it clear that an applicant must meet all nine conditions set forth in 33 U.S.C. 1503(c) before the Maritime Administrator may issue a license for an export facility. The Maritime Administrator's Deepwater Port Licensing record of decision (ROD) will address whether the (import or export)

deepwater port license application satisfies each of the nine criteria and the requirements of the National Environmental Policy Act (NEPA), 42 U.S.C. 4321-4347, and other applicable requirements. The ROD will serve as the decision document (and, if appropriate, may contain a Finding of No Significant Impact) for purposes of complying with NEPA.

NYDOS' third comment requested that, at a minimum, NEPA analysis for an export facility should address: the offshore port; the processing and liquefaction/regasification facilities; new pipelines; and other infrastructure necessary to support the production and conveyance of oil and/or natural gas to and from the export facility. The NEPA process requires a thorough analysis of the direct, indirect and cumulative environmental impacts of the proposed action. This analysis includes all aspects of the siting, construction, operation and decommissioning of the deepwater port. The commenter's concern regarding the components and operational aspects of the deepwater port are currently and will continue to be addressed in the statutorily-required NEPA analysis, which is performed as part of all deepwater port license applications. The specific components of a deepwater port terminal, including those the commenter listed, are and will continue to be included in the preparation of the NEPA document. Finally, NYDOS requested that to ensure the NEPA review process adequately identifies and analyzes all potential impacts, MARAD's final policy clearly describe the relevant shore-based and offshore infrastructure that will be considered within the scope of an export facility. The U.S. Coast Guard (Coast Guard) and MARAD's environmental review of the proposed action includes all direct, indirect and cumulative impacts. This review must cover all offshore and onshore components and support activities associated with the deepwater port. However, it is important to note that every deepwater port application is considered on a case-by-case basis. While the DWPA provides a comprehensive definition of what constitutes a deepwater port, it

would be inappropriate to try and set forth a specific list of shore-based and offshore components that should be considered as part of an application and made part of the NEPA analysis.

COA provided five comments on the proposed policy. COA's first comment stated that it is critical that MARAD's proposed policy have broad application and require a full review process that, among other requirements, engages the public in a meaningful way. In compliance with the DWPA, NEPA and other applicable laws and regulations, MARAD will ensure that a full and comprehensive public engagement and application review process is applied to the processing of all deepwater port license applications for both imports and exports.

COA's second comment stated that it agrees with MARAD's proposal to encompass both established and proposed facilities in any export licensing policy it might adopt. The comment goes on to state that COA finds the proposed policy is sufficiently broad in this regard.

In addition, COA discussed the scope of review contained in MARAD's proposed policy and expressed support for the concept of treating all requests for export authorization as new license applications and indicated support for the scope of review to occur under the proposed policy. MARAD will treat any proposal for deepwater port exports as a new license application, and MARAD will apply a full and comprehensive application review and public engagement process to the processing of export applications.

COA's fourth comment requested that in instances where MARAD prepares an Environmental Assessment and intends to issue a Finding of No Significant Impact, it should provide a public review and comment period of not less than 90 days. According to COA, such a requirement would help maintain the integrity of the export application review process, ensure public involvement therein, and further enhance MARAD's environmental review.

As part of the existing application review process, MARAD ensures that an adequate and comprehensive environmental review is applied to the evaluation of all deepwater port license applications. MARAD will continue its comprehensive environmental review process and

provide for the public review and comment periods required by current regulations for all applications.

The final comment provided by COA relates to the environmental review of indirect and cumulative impacts. COA stated that there are a number of indirect and cumulative impacts that MARAD should consider with respect to any export license application. They include the impacts of a facility (operating with the functionality the proponent seeks) upon (1) the natural aquatic environment, including from increased vessel traffic and shipping lane congestion, (2) air quality, both on and offshore, (3) the environment onshore and proximate to the distribution infrastructure, (4) the environment in and around the extraction areas, and (5) the upstream (e.g., increased shale production and fracking activities), downstream (e.g., carbon emissions), and climate change impacts. Further, COA states that MARAD should consider the proposed activity's impacts in conjunction with impacts from other reasonably foreseeable projects, such as wind farms and other pipelines within the designated application area. As noted above, the Coast Guard and MARAD's environmental review of the proposed action includes all direct, indirect and cumulative impacts. This review must cover all offshore and onshore components and support activities associated with the deepwater port. It is important to note, however, that every deepwater port application is considered on a case-by-case basis. While the DWPA provides a comprehensive definition of what constitutes a deepwater port, it would be inappropriate to try and set forth a specific list of shore-based and offshore components that may be considered as part of an application and made part of the NEPA analysis.

The final commenter, a private citizen, supported the proposed policy and requested that MARAD follow the precedent established by former MARAD Administrator Sean Connaughton and link application approval to the use of U.S. vessels and U.S. crews to export liquefied natural

gas (LNG). Under this policy, MARAD will continue its efforts to support the use of U.S. flag vessels and U.S. crews in the operation of all deepwater port licensed facilities.

Final Policy

On December 20, 2012, the Coast Guard and Maritime Transportation Act of 2012 (Pub. L. 112-213, Sec. 312 (Dec. 20, 2012)) (CG&MT Act) amended Section 3(9)(A) (33 U.S.C. 1502(9)(A)) of the Deepwater Port Act (DWPA) and brought offshore export facilities within the DWPA's definition of a deepwater port. Previously, the definition of a deepwater port was limited to facilities transporting oil or natural gas to any State. The Secretary of Transportation must license the ownership, construction and operation of a deepwater port, now including export facilities, pursuant to 33 U.S.C. 1503(a) and (b). This amendment will be implemented in accordance with existing statutory and regulatory requirements applicable to the DWPA. The CG&MT Act provided no other amendments to the DWPA.

Pursuant to 33 U.S.C. 1501–1524,¹ the Maritime Administration (MARAD) and U.S. Coast Guard (Coast Guard) jointly process deepwater port license applications under delegations from the Secretary of Transportation (49 CFR 1.93(h)) and the Secretary of Homeland Security (Department of Homeland Security Delegation 0170.1(75)), respectively. In general, the Coast Guard and MARAD are co-lead agencies for compliance with NEPA, 42 U.S.C. 4321 through 4347. The Coast Guard also is responsible for matters related to navigation safety, engineering and safety standards, and facility operations and inspections. MARAD is responsible for determining citizenship and financial capability of the potential licensees, preparing the Record of Decision (ROD), and issuing or denying the license. The Coast Guard and MARAD share various other responsibilities under the DWPA, including the duty to consult with other Federal

¹ When the Coast Guard moved from the Department of Transportation to the Department of Homeland Security, its responsibilities for deepwater ports transferred with it. See 6 U.S.C. 468(b).

or State agencies. Such agencies include the U.S. Department of Energy (DOE), which is responsible for authorizing the transaction of importing or exporting liquefied natural gas (LNG) to or from the United States; the Federal Energy Regulatory Commission (FERC), responsible for authorizing onshore LNG import or export facilities, including the construction and operation of onshore natural gas pipelines that interconnect with deepwater ports; and the Pipeline and Hazardous Materials Safety Administration (PHMSA), which is responsible for ensuring the safe construction, operation and maintenance of natural gas pipelines located on Federal lands, including offshore deepwater port pipelines.

Additionally, the Coast Guard has previously developed comprehensive regulatory requirements for deepwater port license applications. Regulations detailing the requirements of the deepwater port license application process; design, construction, and equipment; and port operations can be found in 33 CFR parts 148, 149 and 150. Additionally, it is noted that on April 9, 2015, the Coast Guard published in the Federal Register a Notice of Proposed Rulemaking (80 FR 19118) updating 33 CFR Parts 148, 149 and 150. These regulations pertain to the application review process, planning, environmental review, design, construction and operation of deepwater port facilities without specific regard to whether the facility imports or exports oil and/or natural gas products. With the addition of oil and natural gas exportation under the amendment to the DWPA, MARAD does not foresee any reason to alter the deepwater port licensing application process.

Accordingly, MARAD, with the concurrence of the Coast Guard, intends to use the existing Deepwater Port regulations for the review, evaluation and processing of any deepwater port license application involving the export of oil or natural gas from domestic sources within the United States as provided for in 33 CFR parts 148, 149 and 150.

A deepwater port license issued by MARAD does, not, by itself, convey an authorization to export crude oil or natural gas. Pursuant to 15 CFR 754.2, a license granted by the U.S. Department of Commerce (DOC) would generally be required for exports of crude oil. Exports of natural gas, including LNG, will generally require authorization from DOE pursuant to Section 3 of the Natural Gas Act of 1938. Exports of refined petroleum products do not generally require an export license. MARAD licenses the deepwater port facility, while DOC and DOE approve the transactions that utilize the facility.

Any deepwater port applicant who proposes to export oil or natural gas from domestic sources within the United States must submit an export-specific comprehensive license application conforming to all established and applicable deepwater port licensing requirements and regulations. Note that 33 CFR 148.5 defines “oil” as “petroleum, crude oil and any substance refined from petroleum or crude oil.” Thus, this requirement would also cover a deepwater port intended for the export of refined products.

The considerable technical, operational and environmental differences between import and export operations for oil or natural gas projects are such that any licensed deepwater port facility operator or any proponent of a deepwater port that has an application in process who proposes to convert from import to export operations must submit a new license application (including application fee) and conform to all licensing requirements and regulations in effect at such time of application. For licensed deepwater ports, an application to convert from import operations to export operations requires, at a minimum: 1) approval from DOE or other approval authority to export oil or natural gas to free trade and/or non-free trade agreement countries; 2) a new or supplemental environmental impact statement or environmental assessment pursuant to NEPA that assesses the environmental impacts of the proposed change in operations; and 3) a

revised operations manual that fully describes the proposed change in port operations. Only after all required application processes are completed, and MARAD issues a ROD or Finding Of No Significant Impact (FONSI) that explicitly addresses the nine mandatory criteria specified in the DWPA (33 U.S.C. 1503(c)), may the Maritime Administrator approve, approve with conditions, or disapprove an application to export oil or natural gas through a deepwater port.

For deepwater ports that already have a license to import oil or natural gas, if the Maritime Administrator approves an application to convert to export operations, the licensee must surrender the existing license, and the Maritime Administrator will issue a new license, as outlined above, with conditions appropriate to all intended activities, including, if applicable, authority to engage in bidirectional oil or natural gas import and export operations. For applications to site, construct and operate a new deepwater port, the Maritime Administrator will issue a new license with conditions appropriate to the applied-for activity.

Policy Analysis and Notices

MARAD is publishing this policy in the Federal Register to indicate how it plans to exercise the discretionary authority provided by the DWPA, as amended by the CG&MT Act. This policy establishes an administrative process for the review of deepwater port applications that propose to export oil or natural gas. It is consistent with the existing process previously established for the review of import applications. This policy acknowledges that these existing statutory and regulatory procedures are sufficient and appropriate for the processing of export applications.

(Authority: The Coast Guard and Maritime Transportation Act of 2012; The Deepwater Port Act of 1974, as amended, 33 U.S.C. 1501 - 1524; 49 CFR 1.93.)

Dated: May 1, 2015.

By Order of the Maritime Administrator

Thomas M. Hudson, Jr.
Secretary, Maritime Administration

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